IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 134 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JESINGHBHAI LAXMANBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:
MR PM VYAS for Petitioner No. 1
MR KT DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 24/07/2002

ORAL JUDGEMENT (Per : MR.JUSTICE J.R.VORA)

1. This appeal is preferred by the appellant original accused No.1 out of originally 6 accused of Sessions Case No. 54/94 of the Sessions Court Panchmahals at Godhra. The present appellant was convicted by learned Sessions Judge, Panchmahals, Godhra, for the offence proved against him under Section 302 of the Indian Penal Code and was sentenced to undergo life imprisonment and fine of Rs.500 in default 2 months rigorous imprisonment. Being aggrieved by the above said judgment dated 4th January, 1995 of the learned Sessions Judge, Panchmahals at Godhra in Sessions Case No. 54/94, this Appeal is preferred by the appellant.

2. The incident leading to conviction of the appellant occurred on 29th of December, 1993 in the evening at village Dhanitra, Taluka Godhra, District Panchmahals. Complaint is given by Shantilal Maijibhai Parmar, son of deceased Maijibhai, who died in the incident. According to the complainant he along with his parents resided at village Dhanitra in Parmarpura Falia. He is the eldest son of deceased Maijibhai. Two younger brothers of the complainant are Rangit and Jasvant. All the three brothers were married. All the accused also resided in the same locality. Accused No.1 Jesinghbhai Laxmanbhai, accused No.2 Bhaya @ Prabhat Sardar, accused No.3 Manilal Laxmanbhai and accused No.4 Pratapsinh Laxmanbhai are the cousin brothers of the complainant, while accused No.5 Sardarbhai Andabhai is uncle of the complainant and accused No.6 Bhalabhai Sardarbhai is cousin brother of the complainant. Agricultural land owned by the complainant's family and the family of accused No.5 uncle of the complainant are situated adjoining each other. The well for irrigating the land is situated in the land owned by the complainant family. This well is of joint ownership between the family of the complainant and the family of the accused No.5 Sardarbhai Andabhai Parmar. The complainant's family had arranged a machine to draw water from the well and to irrigate the land, but the family of the accused No.5 had no such machine and, therefore, they were utilizing the machine owned by the family of the complainant to irrigate their land. At the relevant time crop of corn was standing in the land of accused No.1 and accused No.5. A month before the incident through the machine owned by the complaint's family, the land of the accused No.5 was irrigated, for which accused No. 1 and accused No.5 both were required to pay rent for utilizing the machine of the family of the complainant. On 29th December, 1993 though the amount of rent was demanded from the accused, it was not paid. On the day of incident, for the agricultural work, complainant, his father Maijibhai, his

brother Rangitbhai and Champaben wife of Jaswantbhai brother of the complainant, took the machine to the well for irrigation. They noticed that the accused No.5 had obtained another machine owned by Mr. Arjan Mangal on rent and was placed on the well which was of the joint ownership. So, the complainant could not place their machine on the well. Thereafter since a canal was passing through the agricultural land of the complainant, they managed to place machine on the canal and to draw water. At this very juncture on their own agricultural land all the six accused were irrigating their land and hence deceased Maijibhai conveyed to accused No.5 that they were not paying the amount of rent to Maiji and had obtained another machine. Perhaps this irritated the accused No.1 and accused No.1 Jesinghbhai Laxmanbhai who was doing agricultural work on his land, with a spade in his hand ran after the complainant and his family. Having noticed the accused No.1, the family of the complainant went to their machine placed on the canal to escape from the quarrel. This incident occurred at about 5'O clock in the evening. Thereafter at about 6'O clock, Champaben, Maijibhai and Rangitbhai left the agricultural land to come to their residence. Complainant Shantilal was in agricultural land and was managing the machine. All the accused were sitting in the house of accused No.1 Jesingbhai Laxmanbhai. Accused No.1 - Jesingbhai Laxmanbhai had an axe in his hand, accused No.2 Bhaya Prabhat Sardar had stick in his hand, accused No.3 Manilal Laxmanbhai had an axe in his hand, accused No.4 Pratapsinh Laxmanbhai had a dharia and accused No.5 Sardarbhai Anadbhai and accused No. 6 Bhalabhai Sardarbhai had sticks in their hands. They all started beating Maiji father of the complainant as soon as the deceased accompanying with Rangitbhai and Champaben passed through near the house of accused No.1 (present appellant) on way leading to the residence of Maijihai. Accused No.1 Jesingbhai Laxmanbhai gave a blow to Moijibhai below right knee on the backside. Champaben shouted. So the complainant reached at the scene of incident. Rangitbhai tried to save Maiji and in this exercise accused No.2 Bhaya @ Prabhat Sardar gave a blow of dharia on the hand of Rangitbhai. It is the case of the prosecution that Maiji had fallen down on the road. The complaint was lodged by the complainant before Godhra Taluka Police Station on the next day i.e. 30th December, 1993 at about 9.00 in the morning. PSI Ranjitsinh Narayan Gohil of Godhra Taluka Police Station recorded the complaint of complainant Shantilal Maijibhai. He also forwarded the dead body of Maiji for the postmortem. PW Rangit who was injured also sent to the hospital along with a yadi for the treatment. After

investigation, against all the six above accused a charge sheet for the offence punishable under Sections 147, 148, 149, 302, 324 and 504 of the IPC along with the offence punishable under section 135 of the Bombay Police Act was preferred before the concerned Magistrate and the case ultimately was committed to the Court of Sessions, Panchmahals at Godhra.

3. Vide Exh.3 a charge was framed for the above said offence against all the six accused and they pleaded not guilty. Prosecution examined as many as 11 witnesses and produced documentary evidence. After considering the evidence of eye witnesses viz. (1) complainant Shantilal Maiji Exh.28, (2) Champaben, Exh.30, (3) Rangitbhai (injured eye witness) Exh.46, learned Sessions Judge came to the conclusion that it was a case of free fight and the charges levelled against accused No.3 Manilal Laxmanbhai, accused No.4 Pratapsinh Laxmanbhai, accused No.5 Sardarbhai Andabhai and accused No.6 Bhalabhai Sardarbhai could not be proved because according to learned Sessions Judge a fatal blow was inflicted by original accused No.1 appellant herein and the incident being free fight, he saddled the liability of each of the accused to their individual acts. Since no overt act was attributed to the accused Nos. 3, 4, 5 and 6 were acquitted, while the accused No.1 was convicted for the offence levelled against him of 302 of the Indian Penal Code and was sentenced to life imprisonment. The accused No.2 Bhaya @ Prabhat Sardar was also convicted for causing injuries to Rangitbhai for the offence punishable under Section 324 of the Indian Penal Code and he was sentenced to six months rigorous imprisonment and fine of Rs.200/-. The Trial Judge disbelieved the case of prosecution for the charges against all the accused under Sections 147, 148, 149 and 504 of the Indian Penal Code as well as charges under Section 135 of the Bombay Police Act. The learned Sessions Judge convicted accused Nos.1 and 2 as aforesaid for their individual acts.

4. Being aggrieved by the above said judgment as aforesaid accused No.1 Jesingbhbhai Laxmanbhai Parmar has filed this appeal.

5. Learned Advocate Mr.P.M.Vyas for the appellant was heard at length. Learned Advocate Mr. Vyas for the appellant fairly submitted that so far as the proved facts of the case are concerned he had nothing to submit but he advanced his argument and focussed the attention on the facts and circumstances of the case and the nature the offence proved against the accused appellant. According to the learned advocate for the appellant,

facts and circumstances clearly establish that the appellant could not have been convicted for the offence punishable under Section 302 of the IPC but what is proved against the accused is the offence under Section 304 Part I or II of the Indian Penal Code. In short it was argued that this is not a case of murder but a case of culpable homicide not amounting to murder. Learned Advocate for the appellant draw our attention to exception 4 of Section 300. It was submitted that the parties are near relatives. There was an earlier incident and there could not have been an intention on the part of the accused No.1 appellant to cause murder of Maiji. It was urged that the accused appellant is attributed a single blow below right knee of the deceased. It was urged that there was no premeditation on the part of the appellant. It was also urged that it was a sudden quarrel and in heat of passion the incident occurred. It was also submitted that the accused did not act cruelly nor did take the undue advantage of the situation. It was urged that the appellant is undergoing sentence since 1993. It was also urged that the conviction of the appellant under Section 302 is erroneous and is required to be converted into Section 304 Part I or II of the Indian Penal Code. It was further submitted that the appellant accused has already undergone 8 to 9 years imprisonment and this period of undergone imprisonment may be considered sufficient punishment for the act done by the appellant. Therefore it was lastly submitted that the appellant may be ordered to be released and appeal be allowed.

6. On the otherhand, learned APP Mr. K.T. Dave has drawn our attention to the evidence of 3 eye witnesses including injured eye witness and the Doctor who performed postmortem and submitted that the Sessions Judge rightly convicted the appellant for the offence under Section 302 of the IPC and in the facts and circumstances of the case, the Sessions Judge did not fell into error. It was further submitted that the appeal be dismissed.

7. Considering the rival contentions, we have carefully gone through the evidence on record in the shape of oral as well as documentary. We are called upon to decide the nature of offence proved against the appellant. Even if we examine the appeal in this narrow compass, we would be required to appreciate the evidence with reference to the contentions raised on behalf of the appellant. While we consider the evidence of Shantilal Exh. 28, PW4, complainant and the son of the deceased, the evidence of PW5, Exh.30 Champaben - daughter-in-law

of the deceased and the evidence of PW10, Exh.46 Rangitbhai, an injured eye witness, it clearly transpires that, it is proved that one incident preceded the present incident which took place at 5'O clock, in the field of the complainant whereby the deceased demanded the money for the rent of machine utilized by the accused, and appellant No.1 reacted to this demand with a spade in his hand, menancingly ran after the family of the complainant. The family of the complainant escaped because they retreated from that place and came to their own field where the machine was fixed. Evidence clearly denotes that while Champaben, Rangitbhai and deceased Maiji were returning home at about 6'O clock from their field, they were accosted by the accused. Complainant Shantilal Exh. 28 has clearly deposed that way to their home passed through the court yard of the house of the accused No.1. Champaben who accompanied the deceased clearly states that all the six accused with weapons like axe, dharia and sticks were standing near the house of the accused No. 1. This speaks of premeditation. What is proved by the deposition of these three eye witnesses, is, without any further verbal exchanges, the appellant No.1 inflicted blow below the right knee of the deceased. The necessary reasonable inference could be drawn that all the accused lashed with weapons, were awaiting the arrival of complainant side. These facts which are proved by the evidence leaves no manner of doubt that the appellant No.1 had the necessary intention to be saddled with the charge under section 302 of the IPC. While we scrutinised the evidence of the three witnesses, it could not be found that the incident which occurred near the house of appellant, can be labelled as a sudden fight or an incident occurred in a heat of passion. It is also clear from the evidence that on earlier incident, family of the complainant was driven out by the accused No.1 appellant running after them with a spade in hand and immediately thereafter at about 6'O clock (an hour later) this incident occurred. When we link this previous incident with the latter incident, we find that neither the deceased nor Champaben nor other two witnesses Shantilal or Rangitbhai were carrying any weapon. The road to reach their house passed near the house of appellant No.1 where all the appellants were prepared and waiting for the deceased with weapons like dharia, sticks and axe. The deceased was given a fatal blow and while Rangit attempted to intervene, he also suffered injury. For the abovesaid reasons we cannot agree with the learned advocate for the appellant that the accused have not taken undue advantage of the situation. The proved facts narrated above amply denote that the accused were waiting for the deceased and his family and when they

reached near the house of the appellant, the accused party inflicted blows. The net result of the reappreciation of evidence and circumstances of the case bring us to the conclusion that the appellant is not entitled to the benefit of Exception 4 of Section 300 of the IPC so as to convert the nature of offence from "murder" to "culpable homicide not amounting to murder". This finding is further supported by the medical evidence which categorically discloses that the injury which the deceased received was sufficient in the ordinary course of nature to cause death. Dr. Vijaykumar Pathak, is examined at Exh.44, in his deposition he clearly states that the injury which deceased had, could be caused by an axe and was sufficient in the ordinary course of nature to cause death. This opinion of an expert could not be assailed in the cross-examination of the defence and, therefore, considering the evidence in totality, it could not be concluded that the appellant had no required intention or that the incident occurred in heat of passion or the same was a sudden fight or that the accused party did not act in cruel manner and did not take undue advantage of the situation.

8. The acquittal of the other accused is not subject matter of this appeal. Original accused Not 2 who was convicted under Section 324 of the IPC has not filed any appeal. Therefore, we are concerned only with the facts as proved against the present appellant - original accused No.1. Appreciating the evidence and circumstances of the case even for coming to the conclusion as to the nature of offence proved against the appellant, we conclude that the appellant was rightly convicted by the learned Sessions Judge for the offence under Section 302 of the Indian Penal Code. We do not find any reason to interfere with this finding of the learned Sessions Judge.

9. In the result, this Appeal is dismissed.

(Y.B. Bhatt, J.)

(J.R. Vora, J.)

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